

THE 2017 LEGISLATIVE SESSION REPORT TO MEMBERS

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2017 LEGISLATIVE SESSION AT-A-GLANCE

On July 7, 2017, the Oregon Legislature completed its business and adjourned. When the legislature first convened in January, our industry faced an unprecedented number of threats and opportunities. Despite operating in one of only six states controlled by Democrats, AGC, working closely with a broad cross-section of allies, defeated the most critical threats to our industry. The threats defeated included unfeasible workplace scheduling mandates, multiple attempts to outlaw pre-2007 diesel off-road equipment, and the imposition of a gross receipts tax on business for the first time in Oregon's history. Perhaps more importantly, AGC played a vital role in the passage of Oregon's largest single transportation funding investment and in securing a dramatic increase in the funding of Career Technical Education (CTE).

If you have any questions on the issues or state investments summarized here, or any of the 373 bills AGC monitored, please contact [John Rakowitz](#), 503-317-1781.



*Oregon State Capitol Building
Salem, Ore.*

A MESSAGE FROM PRESIDENT BRIAN GRAY



Brian Gray—2017 AGC President

In 2017, my focus as AGC's president has been on the importance of building relationships and membership engagement. I believe the results of the 2017 Legislative Session demonstrate once again that our association can, and must, play a role in shaping our industry's future. This can only happen when our board, our officers, and individual members directly engage. Being in Salem several times during the session allowed me to see first-hand the importance of building relationships.

I want to call out our Legislative Forum co-chairs—Past Presidents Dee Burch and Tom Gerding—for their ongoing leadership, and give a special shout out to AGC members Larry Gescher, Dave Kronsteiner, Steve Wildish, and Kimberly Wood for their individual efforts leading to a very successful 2017 Legislative Session for our industry.

Because of the relationships that AGC Public Affairs Director John Rakowitz has knitted together, we were able to meet with key legislators such as Joint Transportation Committee Vice Chair Brian Boquist, in mere minutes. I saw Kirsten Adams, our Public Affairs counsel, carrying on that same approach with other AGC priorities. John and his team deserve our thanks and support for their tremendous work on our behalf.

I also want to remind all members of the opportunity to participate in our Legislative Forum where AGC's core policies are developed. Every AGC member is invited to participate in those. If you have an interest, please send [John Rakowitz](#) an email and you will be added to that group. If you are interested in AGC's core policies that guide us in all our work at the legislature, they can be found [here](#).

INDUSTRY SHAPING LAWS

Accountability in Public Contracting: PASSED

Issue: A year ago, AGC joined an industry coalition convened by Oregon Concrete and Aggregate Producers Association that included Asphalt and Paving Association of Oregon and Northwest Utility Contractors Association to draft legislation to strengthen compliance with Oregon's long-standing least-cost public construction principle. The coalition had legislation introduced to ensure that the industry can hold local governments accountable.

Background: In recent years, a number of counties and cities have effectively ignored Oregon law requiring them to conduct an analysis for projects costing more than \$125,000, to determine whether it is more cost effective to contract out public projects. The law also includes a two-inch exception to the \$125,000 threshold for paving work, which has resulted in significant local government abuse.

Result: This coalition successfully passed [House Bill 3203](#) on the last day of the 2017 session. Among other things, it provides enforcement methods (short of suing a local government) when it is suspected that a local government is not in compliance. In addition, BOLI is required under Oregon law to review whether local governments are abiding by the least-cost requirement that has been in place since the 1970s. Addressing the two-inch exception was the most contested part of the bill. The coalition concluded that the bill would not pass if we continued to press the two-inch exception, and made the decision to forego addressing that issue to get the other portions of the bill passed.

What comes next: The industry coalition will continue to work on the two-inch exception for paving work during the upcoming year.

California Clean Diesel Regulation: DEFEATED



*Larry Gescher
AGC Past President*

Issue: For the second session in a row, Senator Michael Dembrow (D-Portland) proposed to impose California's stringent off-road diesel regulations throughout the State of Oregon, in [Senate Bill 1008](#).

Background: The California regulatory program would have outlawed all off-road construction equipment older than 2007. AGC and its coalition partners argued that the cost to comply was prohibitive for contractors and an unfunded mandate for public owners of off-road fleets. The original bill would have imposed clean diesel public contracting requirements and resulted in creating advantages and disadvantages depending on contractors' ability to purchase new diesel equipment. The bill also included a permanent mandatory industry-paid registration program for off-road construction equipment.

The AGC-led coalition advocated that Oregon must avoid the expensive mistake California made when it adopted emissions standards without the benefit of an impartial, third party inventory. Department of Environmental Quality (DEQ) currently relies solely on Environmental Protection Agency modeling information for emissions estimates from mobile off-road diesel sources. An inventory will help make sure that any future proposed regulation would be based on real data.

AGC organized the broad and diverse coalition of public and private fleet owners necessary to defeat this bill. In its place, our coalition proposed [Senate Bill 971](#) requiring DEQ to contract with a third party organization to create a one-time inventory of off-road diesel equipment.

"This fight is not over," said Larry Gescher, AGC past president. "The environmental activists are targeting our industry specifically for new equipment mandates. That's why AGC supported a comprehensive inventory paid for by the state. This means that our members and all industries with diesel fleets will need to participate in the coming inventory. This inventory is critical as we learned from the California process that the EPA model that DEQ utilizes to project diesel emissions was off by 340%. It is in our industry's best interest to get an accurate inventory to help us fend off this regulation in 2019."

Result: In the last week of the session, AGC and its coalition partners were successful in convincing the legislature to dedicate \$500,000 to complete an inventory of all off-road fleets, both public and private, by May 1, 2019, and ensured that California's diesel regulations would not be imported to Oregon in the immediate near term.

What comes next: AGC will be reaching out to membership regarding the off-road diesel inventory, once there is information available about what will be asked of our industry.

INDUSTRY SHAPING LAWS CONTINUED

Reasonable Apprenticeship Standards: PASSED

Issue: For over a decade, AGC has worked to shape an apprenticeship standard that works for all parts of our membership. In legislative session after legislative session, unworkable and unfeasible bills have been introduced. At the same time, AGC has advocated for the necessary career technical education investments needed to grow apprentices and meet our industry's growing workforce shortages.

Background: In 2015, an apprenticeship bill was proposed that AGC could not support. It would have created a new responsible bidder requirement, mandating a 10% apprenticeship utilization for an individual contractor's public and private works, in order to bid on any public work in Oregon. This bill passed in the House, but failed to pass in the Senate, ensuring that the issue would be hotly debated in the 2017 Session.

Result: [House Bill 2162](#) was a compromise bill, in the end supported broadly by labor and management industry associations. HB 2162 requires 10% use of apprentices on state-funded projects **only** over \$5 million. It exempts Oregon Department of Transportation (ODOT) projects, ensuring that the existing ODOT apprenticeship program will continue. This apprenticeship standard is estimated to apply to only a handful of state projects in the next biennium. HB 2162 also creates a six member, evenly divided management-labor advisory committee to oversee the implementation of this new apprenticeship standard.

What comes next: AGC's Legislative Forum Co-Chair Tom Gerding has agreed to have his name submitted to serve on this committee.



*Tom Gerding
Co-Chair,
Legislative Forum*

Predictive Scheduling: PASSED (EXEMPTING CONSTRUCTION)

Issue: Labor advocates introduced [Senate Bill 828](#), proposing a sweeping employer mandate that would have required all industries (including construction) to pay employees four hours pay when schedules changed within 24 hours and added penalties for employers who did not comply. There were also rigorous recordkeeping requirements, with strict penalties for violations.

Background: The [initial bill](#) required employers to pay four hours at regular rate of pay to their employees if the employees did not work the entire shift or were notified less than 24 hours before showing up for work that the schedule had changed. AGC and the Oregon Home Builders Association successfully made the case that this proposed law would not work for our weather and schedule sensitive industry. The regulation in the initial proposal would have been particularly burdensome on smaller contractors, requiring every contractor to allow employee input into their work schedules.

Result: After months of lobbying, the bill that passed applies only to large employers in a limited number of sectors (retail, hospitality, and food service). The final bill also protects not only our industry, but all employers, by preventing local governments from creating their own predictive scheduling mandates on all industries.



STATE INVESTMENTS AGC SUPPORTED

Transportation Package: PASSED

Issue: AGC has long recognized the need and advocated for the type of comprehensive transportation infrastructure investment that most western states have made in recent years.

Background: Thirteen months ago, the Oregon Legislature appointed a bipartisan Joint Committee on Transportation Preservation and Modernization to begin the work necessary to understand the scope and complexity of Oregon's infrastructure needs. Under the leadership of two senators and two representatives, dozens of workgroup hearings and meetings were conducted, ensuring a broad cross-section of perspectives were considered. AGC's President Brian Gray and 2015 Past President Larry Gescher personally engaged in workgroup discussions and delivered the contractors' perspective on a wide range of issues, helping to shape the bill that ultimately passed on the next to last day of the session.

Result: The result of this thirteen month effort is a 300 page bill ([HB 2017](#)). The package that passed will invest \$5.3B over a ten year period and is estimated by ODOT to create 16,000 construction industry jobs in the next decade. The traditional highway trust fund resources dedicated to state highways, bridges, and city streets and county roads is estimated to be \$3B over ten years (see chart). HB 2017 authorizes tolling and/or congestion pricing for metro area mega congestion relief projects (I-205 and potentially Rose Quarter). By comparison, the 2009 Jobs and Transportation Act (JTA) invested \$1.5B over six years, making the investment in HB 2017 approximately double the size, at \$3.6B over seven years. An infographic provided by ODOT outlining all the major elements included in HB 2017 (public transit investments, new rest stops, and other multimodal investments) is available [here](#).

The necessity to ensure the efficient use of the resources produced by this package led to a number of new "accountability measures." They include strengthening the Oregon Transportation Commission's oversight of ODOT and required cost benefit project analysis for expansion projects, among other taxpayer transparency measures. More information can be found on this aspect in the summary found [here](#).

What comes next: AGC will immediately turn its attention to organizing an effort to ensure we are ready to defeat any effort that may come to place this measure on the 2018 ballot in an attempt to repeal it.

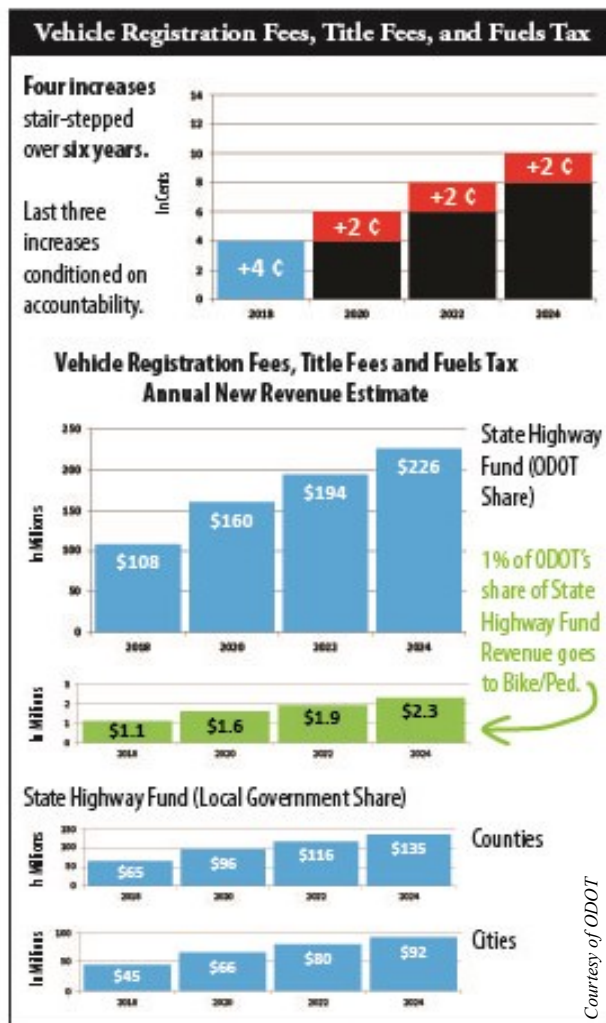
Career Technical Education Funding: PASSED

Issue: AGC has long been active in a coalition to secure significant CTE funding critical to meeting our industry's future workforce needs.

Background: In November 2016, the voters approved, by a two to one margin, Ballot Measure 98, directing the Oregon legislature to fund three major strategies intended to increase Oregon's dismal graduation rate (including CTE, attendance strategies, and advanced high school classes). AGC strongly supported BM 98 and remained a member of the coalition to ensure that the Oregon Legislature funded BM 98.

Result: [Senate Bill 5516](#) dedicates \$170M to funding BM 98. [House Bill 2246](#) provides the distribution formula to school districts for the use of these funds. Under this formula, medium and large school districts must dedicate a portion of their funds to CTE expansion, and provides smaller school districts the option to include CTE in their curriculum. The bill also requires that school districts develop a four year plan for BM 98 implementation and submit it every two years, to ensure that school districts are on track in their implementation. In addition to BM 98 funding, the CTE coalition was successful in maintaining the current CTE funding of \$28,765,675.

What comes next: AGC and our industry now have the opportunity to engage with school districts to maximize construction program development with the new investments in place.



TAX INCREASES DEFEATED

Oregon's Fiscal Future: Tax Increases Versus Containing Government Costs

In April 2017, AGC's Board of Directors adopted the following tax policy that guided our approach to fiscal constraint and tax discussions in this session:

LET IT BE RESOLVED THAT the Board of Directors of the Associated General Contractors Oregon-Columbia Chapter endorses a comprehensive approach to addressing the state's ongoing fiscal challenges in a sustainable manner that grows the economy, reduces and controls costs in state government, and provides new revenues for targeted investments that improve education outcomes (i.e. career technical education) for Oregon.

Despite the resounding defeat of Ballot Measure 97 (a 2.5% gross receipts tax on C-corporations) in November 2016, the Democrat-controlled House made multiple attempts to impose a gross receipts tax. AGC and the Oregon Home Builders Association made the argument repeatedly that a gross receipts tax does not work for a high volume, low margin industry like construction. In the absence of significant cost containment, all new proposed business taxes met with united opposition from the business community.

One last late session attempt to raise revenue came with the introduction of [House Bill 2060](#). This bill would have repealed the pass-through entities' reduced rates, negotiated as part of the 2013 Special Session Grand Bargain, and was estimated to cost the Oregon construction industry an additional \$17.7M in taxes. This bill passed out of the House but was defeated in the Senate.

What comes next: Efforts are already underway to place a 0.95% gross receipts tax on all business entities—C-corporations and all pass-through entities—on the November 2018 ballot.



Dee Burch
Co-Chair, Legislative
Forum

OTHER NEW LAWS

PASSED: Responsible Managing Individuals – Before this session, contractors were required by the Construction Contractors Board (CCB) to stop work immediately upon losing the company's responsible managing individual (RMI). AGC Member and former CCB Chair Kimberly Wood raised this issue and the difficulty it creates for contractors, in particular when the loss of the RMI was unexpected. AGC and the CCB worked together to draft [Senate Bill 336](#) that allows for a temporary RMI and gives contractors 14 days to replace their permanent RMI.

PASSED: Paid Sick Leave Fix – [Senate Bill 299](#) makes several changes to clarify the paid sick leave law that was passed in 2015, including clarification that a construction trailer used for office purposes does not count as a company's location. For those companies who have jobsites in Portland but have their permanent business locations elsewhere, this change ensures that they will not be subject to the Portland sick leave cut off of six employees for paid leave, but instead to the ten employee cutoff that applies to the rest of the state.

PASSED WITH AGC AMENDMENTS: Sexual Harassment Policies in Public Contracting – [House Bill 3060](#) began as a public contracting requirement that would require a sexual harassment policy in place to bid on any state project. Given the politics and supporters of the bill, it was destined to pass. AGC worked with the proponents of the bill to make the requirement easier for contractors to comply with. With AGC's amendments, a sexual harassment policy is not required to bid on a project, but can be put into place after the bid is awarded. A template for a policy, as well as the policy certification document, will be available on the website for the Department of Administrative Services, to save contractors from having to hire attorneys to create new policies.

DEFEATED BILLS

In addition to the highlighted bills, AGC was instrumental in defeating a variety of other harmful bills, including new employer mandates, wage theft legislation, and public contracting requirements.

Marijuana Accommodation—[Senate Bill 301](#) would require employers to accommodate their employees' use of marijuana when off-duty. Given the limits of technology to test impairment from marijuana, there would be no way for an employer to determine whether an employee was under the influence of marijuana on the job, creating an impossible issue for safety-sensitive industries like construction. As part of a broader business coalition, AGC fought and defeated this bill.

Employer Mandates—A bill was proposed that would require employers with employees on the Oregon Health Plan to pay a penalty to the state. Another bill would have created an unlawful employment practice when workplace bullying occurs. [HB 3087](#) proposed a paid family leave program that would have mandated employers' contribution to a state fund for 12 weeks of paid family or medical leave and another 6 weeks of paid parental leave.

Wage Theft Proposals—These included a proposal to take money from the employer-funded Wage Security Fund to provide grants to community groups to do outreach on wage issues, while also increasing penalties for certain wage violations. Another proposal would eliminate the ability for employers to recoup attorneys' fees in certain wage cases, eliminating the disincentive for employees to bring costly frivolous lawsuits against their employers. A new right of action (a lien on an employer's property) for unpaid wages was proposed in another bill. AGC worked with other members of the business community to defeat all of these bills.

Public Contracting Requirements—This session saw several public contracting requirement proposals, including responsible bidder requirements, Buy America mandates, and changes to enterprise zones. Several bills were introduced that would have required contractors provide health insurance for employees for two years before they were able to bid on a public contracting job. AGC worked with a broad coalition of public and private entities to ensure that none of these bills made it out of committee.

For more information on the 2017 Legislative Session generally, see [this article](#) from *The Oregonian*.



July 2017

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